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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	91192739
Party	Plaintiff Nordstrom, Inc., and NIHC, Inc.
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Date	04/30/2010
Attachments	Nordstrom-OppMotionSuspend.pdf (4 pages)(108282 bytes) ExhibitCover1.pdf (1 page)(27331 bytes) MemorandumDismiss(AsFiled).pdf (16 pages)(218723 bytes) MotionDismiss(AsFiled).pdf (3 pages)(89177 bytes)

THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

NORDSTROM, INC. and NIHC, INC.,	)	Opposition No. 91192739
Opposers,	)	Serial No. 77/769311
v.	)	
BLUE ATHLETIC INC.,	)	
Applicant.	)	Attorney Docket No. 690097.842

OPPOSERS' MEMORANDUM IN OPPOSITION TO APPLICANT'S MOTION TO SUSPEND

Applicant Blue Athletic, Inc. has moved to suspend this Opposition based on a pending declaratory judgment action it filed in the U.S. District Court for the District of New Hampshire, *Blue Athletic Inc. v. Nordstrom, Inc. and NIHC, Inc.*, Docket No. 10-cv-00036 (the "civil action"). Opposers Nordstrom, Inc. and NIHC, Inc. oppose this motion because the civil action is subject to a pending motion to dismiss for lack of subject matter jurisdiction and therefore is not a basis to stay the Opposition.

A. Legal Standard for Stay

Under 37 CFR Section 2.117, the Board may suspend an opposition proceeding when the same parties are involved in a civil action that may have a bearing on the issues before the Board. *See* TBMP § 510.02(a). Whether to issue a stay is in the discretion of the Board. *Id.* For example, the Board may decline to issue a stay if it would only serve to prolong the dispute or the pending civil action involves issues that are within the Board's primary jurisdiction, such as the issue of registrability. *See id.* fn. 168 (citing cases where stay request will be denied if it is more likely to prolong the dispute than lead to its economical disposition and where proceeding includes claims that cannot be raised before the other tribunal).

B. Opposers Have Moved to Dismiss the Civil Action for Lack of Subject Matter Jurisdiction

Applicant filed a Petition for Declaratory Judgment in the civil action, but it is by no means clear the action will go forward and have a bearing on issues before the Board. In lieu of an Answer, Opposers have filed a motion to dismiss the civil action for lack of subject matter jurisdiction which is now pending before the district court in New Hampshire. A copy of motion and supporting memorandum are filed herewith as Exhibit 1.

The civil action filed by Applicant does not present a case or controversy and Opposers expect that their motion to dismiss will be granted and the civil action dismissed.

C. Applicant's Motion to Suspend Fails to Meet the Board's Standard to Stay This Opposition and Should Be Denied

Applicant's Motion to Suspend fails to meet the Board's standard to stay this Opposition because Applicant has not established that there is a pending action that will have a bearing on the issues before the Board. While Applicant cites the civil action, it has yet to establish that the district court has jurisdiction over the civil action, and jurisdiction has been challenged by Opposers in a motion pending before the district court.

Until it is established that a civil action will go forward (something Opposers do not think will happen), the parties should move forward with this Opposition and begin discovery on the issue before the Board, whether Applicant is entitled to a registration for its alleged "DenimRack" mark. Granting Applicant's motion would only serve to prolong this opposition and therefore it should be denied, even if the civil action is deemed to meet the Board's standard for staying the Opposition.

Applicant has not alleged that it would suffer any hardship if its requested stay is denied or delayed until resolution of Opposers' motion to dismiss, and Opposers do not believe any exists.

D. Conclusion

For all the reasons discussed above, Applicant's Motion to Suspend should be denied and all deadlines remain as previously set by the Board.

DATED this 30th day of April, 2010.

Respectfully submitted,

SEED IP Law Group PLLC

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Attorneys for Opposers
NORDSTROM, INC. and NIHC, INC.

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of April, 2010, the foregoing Opposers' Memorandum in Opposition to Applicant's Motion to Suspend was served upon Applicant's counsel by United States first-class mail, postage-prepaid, addressed as follows:

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Annette Baca

EXHIBIT 1

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

BLUE ATHLETIC INC.,	)	
Petitioner,	)	
v.	)	Case No. 10-cv-00036-SM
NORDSTROM, INC. and NIHC, INC.,	)	
Respondents.	)	

MEMORANDUM IN SUPPORT OF RESPONDENTS NORDSTROM, INC.'S AND NIHC, INC.'S MOTION TO DISMISS PETITION

TABLE OF CONTENTS

I. Introduction and Summary of Argument 1

II. Summary of Relevant Facts 2

III. There Is No Subject Matter Jurisdiction Over DenimRack's Declaratory Judgment Petition 4

A. Legal Standard for Declaratory Judgment Jurisdiction 4

B. DenimRack Bears the Burden of Establishing Declaratory Judgment Jurisdiction 5

C. DenimRack's Petition Fails to Meet the Test for Declaratory Judgment Jurisdiction 6

1. DenimRack's Anticipation of a Lawsuit With Nordstrom Is Premature and Not Fit for Review 6

a) Nordstrom's Notice of Opposition and Letters Do Not Establish Declaratory Judgment Jurisdiction 6

b) The Surrounding Circumstances Do Not Support Declaratory Judgment Jurisdiction 7

c) DenimRack's Request for a Ruling on Its Trademark Application Is Premature and Not Ripe for Disposition 8

2. DenimRack Will Not Suffer Hardship if the Court Declines Jurisdiction 8

IV. DenimRack's Requested Ruling on Its Pending Trademark Application Is Premature – Exclusive Jurisdiction Is With the Trademark Office Until It Makes Its Final Decision on Registrability 9

A. The Lanham Act Grants Exclusive Jurisdiction to the Trademark Office to Decide Issues of Registrability in First Instance 9

B. Federal Court Actions Are Proper Only *After* the Trademark Office Renders Its Decision on Registrability 10

C. DenimRack's Petition Improperly Requests a Declaration of Registrability Before the Issue Has Been Decided by the Trademark Office 10

V. Conclusion 11

TABLE OF AUTHORITIES

CASES

Abbott Labs v. Gardner,
387 U.S. 136 (1967) 4, 5

Circuit City Stores, Inc. v. Speedy Car-X, Inc.,
1995 WL 568818 (E.D. Va. 1995) 5, 7, 8

Commonwealth Business Media, Inc. v. Massachusetts Institute for a New Commonwealth, 2006 WL 2818493 (D. Mass. 2006) 5, 6

El Dia, Inc. v. Hernandez Colon,
963 F.2d 488 (1st Cir. 1992) 4

Ernst & Young v. Depositors Economic Protection Corp.,
45 F.3d 530 (1st Cir. 1995) 1, 4, 5, 8

Homemakers, Inc. v. The Chicago Home for the Friendless,
169 U.S.P.Q. 262, 1971 WL 16689 (7th Cir. 1971) 9

James River Petroleum Inc. v. Petro Stopping Centers L.P.,
57 USPQ2d 1249 (TTAB 2000) 10

Kokkonenv Guardian Life Ins. Co. of Am.,
114 S. Ct. 1673 (1994) 5

Kosmeo Cosmetics Inc. v. Lancome Parfums et Beaute & Cie,
1996 WL 929600, 44 U.S.P.Q.2d 1472 (E.D. Tex. 1996) 5, 6, 7

L.A. Gold Clothing Co., Inc. v. L.A. Gear, Inc.,
954 F. Supp 1068 (W.D. Penn. 1996) 6, 7

Massachusetts Ass'n of Afro-American Police, Inc. v. Boston Police Dep't.,
973 F.2d 18 (1st Cir. 1992) 5

Merrick v. Sharpe & Dohme, Inc.,
185 F.2d 713 (7th Cir. 1951) 1, 9

Progressive Apparel Group, Inc. v. Anheuser-Busch, Inc.,
1996 WL 50227 (SDNY 1996) 7

Sweetheart Plastics, Inc. v. Illinois Tool Works, Inc.,
439 F.2d 871 (1st Cir. 1971) 9

W.R. Grace & Co.-Conn. v. U.S. Environ. Protect. Agency,
959 F.2d 360 (1st Cir. 1992) 5, 8

STATUTES

15 U.S.C. § 1119 10

RULES

Fed. R. Civ. P. 12(b)(1) 1, 10
Fed. R. Civ. P. 12(b)(2) 1
Fed. R. Civ. P. 12(b)(6) 1, 10

CONSTITUTIONAL PROVISIONS

U.S. Const. art. III, § 2 4

I. Introduction and Summary of Argument

Petitioner Blue Athletic Inc. (hereinafter "DenimRack") filed its Petition for Declaratory Judgment asserting that it reasonably believed Respondents were going to file a trademark infringement action against it. DenimRack is incorrect. The surrounding circumstances show there was no immediate or real threat of an infringement action by Respondents Nordstrom, Inc. or NIHC, Inc.

Respondents move to dismiss the Petition under Federal Rules of Civil Procedure Rules 12(b)(1) and 12(b)(6) on the following grounds:

1. DenimRack cannot meet its burden to show declaratory judgment subject matter jurisdiction for its claims. The underlying basis for each of DenimRack's Declaratory Judgment Counts – that it reasonably anticipated an infringement action by Respondents – is flawed and DenimRack cannot meet the First Circuit's test for declaratory judgment jurisdiction. The Petition should therefore be dismissed under Rule 12(b)(1). *Ernst & Young v. Depositors Economic Protection Corp.*, 45 F.3d 530, 534 (1st Cir. 1995).

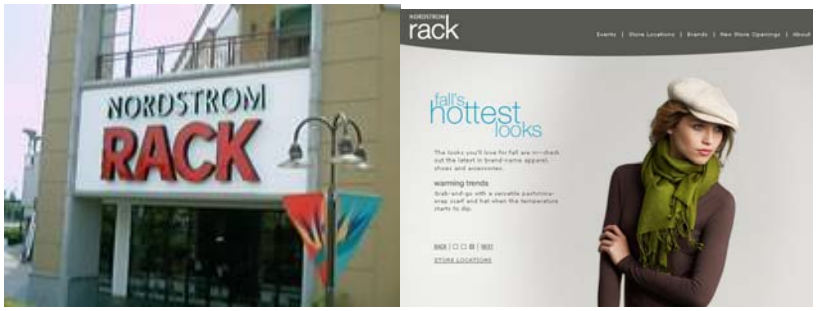
2. DenimRack's request that the Court rule on the registrability of its trademark application is premature. Exclusive jurisdiction over this issue remains with the Trademark Office. The Lanham Act and case law firmly establish that the Trademark Office has exclusive jurisdiction to decide issues of registration in the first instance, and only after the Trademark Office's decision may it be appealed to the federal court. *Merrick v. Sharpe & Dohme, Inc.*, 185 F.2d 713, 717-18 (7th Cir. 1951). DenimRack's premature request should therefore be dismissed under Rule 12(b)(1) for lack of subject matter jurisdiction and Rule 12(b)(6) for failure to state a claim.

This motion is based on the pleadings filed in this action and on the supporting declarations of William O. Ferron, Jr. ("Ferron Decl.") and K.C. Shaffer of Nordstrom, Inc. ("Nordstrom Decl.") filed herewith.

II. Summary of Relevant Facts

Respondent Nordstrom is a leading fashion specialty retailer that owns and operates Nordstrom and Nordstrom RACK stores featuring apparel, accessories and other merchandise. Nordstrom began using RACK to promote is retail store services in the 1970's and opened its first stand-alone RACK store in 1985. There are now 75 RACK stores across the country, with more store openings planned for 2010 and 2011. Nordstrom Decl. ¶ 2.

Nordstrom promotes its RACK stores with store signs and online and print advertisements, as shown in the following examples:



RACK stores are well-known to fashion conscious consumers, especially women, as a place to buy quality apparel and accessories at reasonable prices. Nordstrom Decl. ¶¶ 3, 4.

Respondent NIHC is a separate holding company that owns U.S. Trademark Registration Nos. 1409938 and 2980055 for the NORDSTROM RACK mark and logo, which are used exclusively by its licensee Nordstrom. Nordstrom Decl. ¶ 5.

DenimRack has operated a retail store under the name "DenimRack" since June 2009 selling women's clothing and accessories in Portsmouth, New Hampshire. Petition ¶ 7. The store was originally named "BLUE NYC," but changed its name to "DenimRack" in June, 2009. Ferron Decl. ¶ 2. DenimRack operates a website and online store at www.denimrack.com. Petition ¶ 8.

On June 26, 2009, DenimRack filed intent-to-use U.S. Trademark Application No. 77/769311 for DENIMRACK for retail store services featuring clothing and accessories, which was published for opposition on November 17, 2009. Petition ¶ 9, Ferron Decl. ¶ 3.

On October 23, 2009, Nordstrom sent a letter to DenimRack asking it to withdraw its intent-to-use trademark application for "DenimRack." Petition ¶ 10. The October 23 letter contained no threats of litigation. Ferron Decl. ¶ 4.

On November 10, 2009, DenimRack responded with a letter asserting that its "DenimRack" mark and application did not conflict with Nordstrom's rights. Petition ¶ 11.

On November 18, 2009, Nordstrom filed a Notice of Opposition with the U.S. Trademark Office (the "Trademark Opposition") to DenimRack's trademark application, asserting that "DenimRack" is not entitled to registration because it is merely descriptive and likely to be confused with Nordstrom's RACK marks and registrations. Petition ¶ 13.

On December 9, 2009, Nordstrom sent a follow-up letter reiterating its desire to resolve this matter amicably. Ferron Decl. ¶ 5.

On January 26, 2010, the parties held an Initial Conference in the Trademark Opposition proceeding. During that teleconference, DenimRack indicated that it was considering filing a Declaratory Judgment action, but did not express any fear that Nordstrom was going to file suit against it (and indeed would likely not have given Nordstrom advanced notice of its plans if it had such a fear). Ferron Decl. ¶ 6.

On February 1, 2010, DenimRack filed the present Declaratory Judgment Action asserting that "it is reasonable for Blue Athletic to anticipate if it continues to use its 'denimrack' mark, Respondents will file an infringement action against Blue Athletic." Petition ¶¶ 14, 20, 28. DenimRack bases its belief on Nordstrom's October 23 and November 9 letters and the November 18 Notice of Opposition filed with the PTO. Petition ¶ 14.

At no time did Nordstrom threaten an infringement action against DenimRack. Ferron Decl. ¶ 7. Indeed, Nordstrom continually expressed its interest in entering an agreement with DenimRack. *Id*.

At no time did Respondents expect that their sending letters to DenimRack would lead to a lawsuit in New Hampshire. Ferron Decl. ¶ 8.

Nordstrom does not have a reputation as a litigious company in general or with respect to trademark matters. Ferron Decl. ¶ 9.

III. There Is No Subject Matter Jurisdiction Over DenimRack's Declaratory Judgment Petition

A. Legal Standard for Declaratory Judgment Jurisdiction

"The Declaratory Judgment Act, 28 U.S.C. §§ 2201-2202 (1988), empowers a federal court to grant declaratory relief in a case of actual controversy." *Ernst & Young v. Depositors Economic Protection Corp.*, 45 F.3d 530, 534 (1st Cir. 1995). "The Act does not itself confer subject matter jurisdiction," *id.*, and does not grant an entitlement to litigants to demand declaratory remedies." *El Dia, Inc. v. Hernandez Colon*, 963 F.2d 488, 493 (1st Cir. 1992).

That a case be "ripe" for adjudication is a constitutional requirement tied to the actual case or controversy mandate. *Ernst & Young*, 45 F.3d at 535 (citing U.S. Const. art. III, § 2). "Consequently, although a court may, within stated limits, dismiss declaratory judgment actions in its discretion, a court has no alternative but to dismiss an unripe action." *Ernst & Young*, 45 F.3d at 535.

The First Circuit uses the ripeness doctrine to determine declaratory judgment jurisdiction and dismiss actions that present "premature adjudication." *Ernst & Young*, 45 F.3d at 535 (citing *Abbott Labs v. Gardner*, 387 U.S. 136, 148-49 (1967)). Ripeness is determined by a two part test taken from the Supreme Court's *Abbott Labs* case, with each part being mandatory:

(1) "First, the court must consider whether the issue presented is fit for review." *Ernst & Young*, 45 F.3d at 535 (citing *W.R. Grace & Co.-Conn. v. U.S. Environ. Protect. Agency*, 959 F.2d 360, 364 (1st Cir. 1992)). "The fitness inquiry is directed to the question whether 'the claim involves uncertain and contingent events that may not occur as anticipated, or indeed may not occur at all.'" *Commonwealth Business Media, Inc. v. Massachusetts Institute for a New Commonwealth*, 2006 WL 2818493, at *2 (D. Mass. 2006) (quoting *Massachusetts Ass'n of Afro-American Police, Inc. v. Boston Police Dep't.*, 973 F.2d 18, 20 (1st Cir. 1992) (per curiam)).

(2) "The second branch of the *Abbott Labs* test requires the court to consider the extent to which hardship looms - an inquiry that typically 'turns upon whether the challenged action creates a 'direct and immediate' dilemma for the parties.'" *Ernst & Young*, 45 F.3d at 535 (citing *W.R. Grace*, 959 F.2d at 364).

Thus, for example, if a declaratory judgment petition requests declarations regarding trademark infringement, the petitioner must demonstrate ripeness by showing that it reasonably anticipated having to defend itself against an infringement claim and that it would suffer hardship if the court did not issue a declaratory ruling. *Commonwealth Business Media*, 2006 WL 2818493, at *2. The court looks to the totality of the circumstances to decide whether the petitioner has met its burden to show jurisdiction. *Circuit City Stores, Inc. v. Speedy Car-X, Inc.*, 1995 WL 568818, at *4 (E.D. Va. 1995).

B. DenimRack Bears the Burden of Establishing Declaratory Judgment Jurisdiction

It is DenimRack's burden to show that jurisdiction lies. *Kosmeo Cosmetics Inc. v. Lancome Parfums et Beaute & Cie*, 1996 WL 929600, 44 U.S.P.Q.2d 1472, 1474 (E.D. Tex. 1996) (citing *Kokkonenv Guardian Life Ins. Co. of Am.*, 114 S. Ct. 1673 (1994)). The court has substantial discretion in deciding whether to grant declaratory relief. *Ernst & Young*, 45 F.3d at 534.

C. DenimRack's Petition Fails to Meet the Test for Declaratory Judgment Jurisdiction

The circumstances surrounding the filing of the present Petition show that it is not ripe for review and fails the First Circuit's two part test of (1) fitness for review and (2) hardship if review is denied. Indeed, the case law in the First Circuit and elsewhere shows that courts presented with similar circumstances have dismissed the actions as being premature.

1. DenimRack's Anticipation of a Lawsuit With Nordstrom Is Premature and Not Fit for Review

The Petition asks the Court for a declaration that the "DenimRack" mark does not infringe Nordstrom's rights in the marks "Nordstrom Rack" and "Rack." (Petition ¶¶ 22, 30, 35). DenimRack alleges that there is declaratory judgment jurisdiction because of the Notice of Opposition filed by Nordstrom and the two letters sent by Nordstrom that preceded the Notice of Opposition. (Petition ¶¶ 14, 20, 28).

At no time has Nordstrom threatened suit against DenimRack. By invoking the Declaratory Judgment Act, DenimRack seeks a ruling preempting Nordstrom from bringing a future infringement claim. "Whether [DenimRack] may properly resort to the declaratory judgment mechanism depends on the reasonableness of its anticipation of having to defend itself in the future against such a claim." *Commonwealth Business Media*, 2006 WL 2818493 at *2; *L.A. Gold Clothing Co., Inc. v. L.A. Gear, Inc.*, 954 F. Supp 1068, 1072 (W.D. Penn. 1996).

a) Nordstrom's Notice of Opposition and Letters Do Not Establish Declaratory Judgment Jurisdiction

It is established that an Opposition Proceeding and correspondence connected to it cannot form the basis for Declaratory Judgment jurisdiction. *See*, *e.g.*, *Kosmeo Cosmetics*, 1996 WL 929600, 44 U.S.P.Q.2d at 1474 (collecting cases); *L.A. Gold Clothing*, 954 F. Supp at 1072. Absent a threat of an infringement action, or circumstances that lead to a reasonable fear of suit, Declaratory Judgment jurisdiction cannot be based on a respondent filing a Notice

of Opposition with the Trademark Office and engaging in letter correspondence asking the petitioner to cease using the mark and to withdraw its trademark application. *See*, *e.g.*, *Kosmeo Cosmetics*, 1996 WL 929600, 44 U.S.P.Q.2d at 1474 (collecting cases); *L.A. Gold Clothing*, 954 F. Supp at 1072; *Circuit City Stores*, 1995 WL 568818 at *6-8; *Progressive Apparel Group, Inc. v. Anheuser-Busch, Inc.*, 1996 WL 50227, at *4 (SDNY 1996). These are precisely the actions that DenimRack alleges supports jurisdiction here. The Declaratory Judgment action should therefore be dismissed.

b) The Surrounding Circumstances Do Not Support Declaratory Judgment Jurisdiction

Looking at the totality of the circumstances, DenimRack had no valid reason to believe that Nordstrom was going to file an infringement suit. None of the letters sent by Nordstrom threatened or intimated a district court action. Indeed, DenimRack gave Nordstrom advance notice of DenimRack's plans to file a declaratory judgment petition — hardly something it would do if it thought Nordstrom was about to file suit against it. Ferron Decl. ¶ 6.

At no time did Nordstrom plan or prepare to file suit against DenimRack. Nor was there any outward reason for DenimRack to believe that Nordstrom was likely to file suit. *See L.A. Gold Clothing*, 954 F. Supp. at 1072-73 (filing of several trademark opposition proceedings without federal court actions supports no declaratory judgment jurisdiction because no real threat of litigation posed).

The same actions taken by Nordstrom here have been found to be an insufficient basis for declaratory judgment jurisdiction. For example, in *Circuit City Stores*, a case remarkably similar to the present action, the court dismissed the declaratory judgment action for lack of jurisdiction. 1995 WL 568818 at, *7-8. In *Circuit City*, the declaratory judgment petitioner filed several trademark applications with the U.S. Trademark Office. In response, the declaratory judgment respondent sent the petitioner letters claiming that a likelihood of

confusion existed between their respective marks and demanded that the petitioner "phase-out" use of the mark and abandon the pending trademark application. *Id.* at *1-3. After settlement discussions stalled between the parties, the respondent filed Notices of Opposition with the Trademark Office against the petitioner's trademark applications. *Id.* The petitioner responded by filing a declaratory judgment action. *Id.* The district court dismissed the declaratory judgment action noting that at no time was there any threat of an infringement action that the letters and Notice of Opposition did not give a reasonable basis to believe that any infringement suits would be filed against it: "It is the Court's opinion that these facts, at most, gave the [petitioner] a real and reasonable apprehension of drawn-out warfare in the trenches of the PTO. That, of course, is an insufficient basis for a declaratory judgment." *Id.* at *5-6.

c) DenimRack's Request for a Ruling on Its Trademark Application Is Premature and Not Ripe for Disposition

As discussed in Section IV, below, DenimRack's Petition seeking rulings on its trademark application before the Trademark Office has made its determination is premature and not ripe for disposition.

2. DenimRack Will Not Suffer Hardship if the Court Declines Jurisdiction

DenimRack bears the burden of proving hardship and it has failed to do so. The surrounding circumstances show that DenimRack will not suffer hardship if the Court declines to exercise jurisdiction. Hardship "turns upon whether the challenged action creates a 'direct and immediate' dilemma for the parties.'" *Ernst & Young*, 45 F.3d at 535. The alleged hardship cannot be speculative. *W.R. Grace*, 959 F.2d at 367.

DenimRack has not alleged any hardship. To the extent DenimRack attempts to argue that a hardship exists because Nordstrom could file an infringement suit in the future, such alleged hardship is entirely speculative and based on events that have not been threatened or insinuated.

Finally, even if there was a justiciable claim before this Court (which there is not), the Court should exercise its discretion and decline to exercise jurisdiction over this speculative action. *See Sweetheart Plastics, Inc. v. Illinois Tool Works, Inc.*, 439 F.2d 871, 875-76 (1st Cir. 1971).

IV. DenimRack's Requested Ruling on Its Pending Trademark Application Is Premature – Exclusive Jurisdiction Is With the Trademark Office Until It Makes Its Final Decision on Registrability

A. The Lanham Act Grants Exclusive Jurisdiction to the Trademark Office to Decide Issues of Registrability in First Instance

The courts have recognized for over 50 years that the Lanham Act grants exclusive jurisdiction to the U.S. Trademark Office to decide issues of registrability in the first instance: "Congress has confined the registration of trade-marks to the Patent Office of the United States. The courts of the United States have no jurisdiction over registration proceedings except that appellate jurisdiction given them by the Trade-Mark Act." *Merrick*, 185 F.2d at 717-18; *Homemakers, Inc. v. The Chicago Home for the Friendless*, 169 U.S.P.Q. 262, 263, 1971 WL 16689 (7th Cir. 1971).

Under the Lanham Act, 15 U.S.C. § 1051, only the Trademark Office can issue federal trademark registrations and only the Office Director has the authority to prescribe the forms and other procedures used to obtain a trademark registration: "The owner of a trademark used in commerce may request registration of its trademark on the principal register hereby established by paying the prescribed fee and filing in the Patent and Trademark Office an application and a verified statement, in such form as may be prescribed by the Director, and such number of specimens or facsimiles of the mark as used as may be required by the Director."

B. Federal Court Actions Are Proper Only *After* the Trademark Office Renders Its Decision on Registrability

A federal court action is proper only *after* the Trademark Office renders its decisions on registrability of DenimRack's trademark application. If its application is denied, DenimRack can appeal to the Federal Circuit Court of Appeals or a district court under 15 U.S.C. Section 1071. If the Trademark Office issues a trademark registration for "DenimRack," Nordstrom can ask a district court to cancel the registration. 15 U.S.C. § 1119. In either case, the federal courts only have jurisdiction *after* the Trademark Office has made its decision.[1]

C. DenimRack's Petition Improperly Requests a Declaration of Registrability Before the Issue Has Been Decided by the Trademark Office

The Petition asks the Court to declare that DenimRack is entitled to federal trademark registration of its United States Trademark Application No. 77/769311 for "DenimRack" and that Nordstrom's Notice of Opposition must be denied. (Petition ¶ 35 (Count 3), Relief Request F). Because the Trademark Office has yet to rule on this issue, DenimRack's request that the Court do so is premature. The Court should dismiss DenimRack's request for failure to state a claim under Rule 12(b)(6) or in the alternative for lack of subject matter jurisdiction under Rule 12(b)(1).

[1] When a district court has jurisdiction over an infringement action (which is not the case here), it *can* decide issues of fact and law that may impact registrability of a pending application. Those rulings, in turn, may inform the Trademark Office's determination of whether the application should be allowed, but the Trademark Office must make its final determination before the issue of registrability can be taken to federal court. *See James River Petroleum Inc. v. Petro Stopping Centers L.P.*, 57 USPQ2d 1249, 1250, 1252 (TTAB 2000).

V. Conclusion

For all the foregoing reasons, Respondents' motion to dismiss for lack of subject matter jurisdiction, lack of personal jurisdiction, and failure to state a claim should be granted.

Respectfully submitted,

SEED IP Law Group PLLC

Dated: 4/30/10

/s/William O. Ferron, Jr.
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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of April, 2010, I caused the foregoing Memorandum in Support of Respondents Nordstrom, Inc. and NIHC, Inc.'s Motion to Dismiss Petition to be served upon Tracy A. Uhrin and Jack P. Crisp, Jr., Wiggin & Nourie, P.A., counsel for Blue Athletic, Inc., via electronic transmission in accordance with the Court's Administrative Procedures for Electronic Case Filing.

/s/William O. Ferron, Jr.
William O. Ferron, Jr.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW HAMPSHIRE

BLUE ATHLETIC INC., Petitioner, v. NORDSTROM, INC. and NIHC, INC., Respondents.	Case No. 10-cv-00036-SM

RESPONDENTS NORDSTROM, INC.'S AND NIHC, INC.'S MOTION TO DISMISS PETITION

NOW COME the Respondents, through their undersigned counsel, and move under Federal Rules of Civil Procedure Rules 12(b)(1) and 12(b)(6), to dismiss the Petition for Declaratory Judgment filed by Plaintiff Blue Athletic, Inc. dba DenimRack ("DenimRack"), and in support thereof state as follows:

1. DenimRack cannot meet its burden to show declaratory judgment subject matter jurisdiction for its claims.

2. DenimRack's request that the Court rule on the registrability of its trademark application is premature. Exclusive jurisdiction over this issue remains with the U.S. Trademark Office.

3. In further support of this motion, Respondents incorporate herein the pleadings filed in this action and submit herewith a Memorandum of Law and the supporting Declarations of William O. Ferron, Jr. and K.C. Shaffer.

WHEREFORE, Respondents respectfully request that an order be entered dismissing this action and granting them such other further relief as the Court may deem just, proper and equitable.

Respectfully submitted,

SEED IP Law Group PLLC

Dated: 4/30/10

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CERTIFICATE OF SERVICE

I hereby certify that on this 30th day of April, 2010, I caused the foregoing Respondents Nordstrom, Inc.'s and NIHC, Inc.'s Motion to Dismiss Petition to be served upon Tracy A. Uhrin and Jack P. Crisp, Jr., Wiggin & Nourie, P.A., counsel for Blue Athletic, Inc., via electronic transmission in accordance with the Court's Administrative Procedures for Electronic Case Filing.

/s/William O. Ferron, Jr.
William O. Ferron, Jr.

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